

Appellate Procedures

5-01 APPEALS FROM PROBATE COURT

A. Orders Which Can Be Appealed To Court Of Appeals

1. Final orders affecting the rights or interests of interested person in an estate or trust.
2. Adoption orders.
3. Final orders in juvenile cases which include:
 - a. Disposition placing child under supervision of the court or removing the child from his/her home;
 - b. Orders terminating parental rights;
 - c. Any order required by law to be appealed to the Court of Appeals; and
 - d. Any other final order.
4. Final orders in condemnation cases under drain code.

[MCR 5.801(B), MCR 3.993]

B. Orders Which Can Be Appealed To Circuit Court

Anything not covered above.

[MCR 5.801(C)]

5-02 APPEALS TO CIRCUIT COURT

A. Procedure

1. Obtain written request from attorney with suitable deposit.
[MCR 7.101(C)(2)(c)]
2. Prepare SCAO approved form MC 501 - Reporter/Recorder Certificate of Ordering Transcript on Appeal. Deliver to appellant with sufficient copies. Copy of certificate must be served on appellee within 7 (seven) days after the claim of appeal is filed. Appellant is also responsible for filing the certificate with trial court and circuit court.
[MCR 7.101(C)(3)(c)]
3. Complete transcript within 28 (twenty-eight) days. Furnish completed transcript to appellant for filing with the trial court. [MCR 7.101(F)(1)]

a. Filing and Furnishing the Transcript, Notice

The court rule requires the appellant to file the transcript with the trial court, however, it has been standard practice for the reporter/recorder to not only furnish the party with a copy of the transcript but to file the transcript with the trial court. SCAO approved form MC 502 has been used to notify the court and the parties of this filing, however, notice is required only in appeals to the court of appeals.
[MCR 7.210(B)(3)(e)]

b. Transcript Not Completed Within Time Frame

If the transcript is not completed within 28 days, the trial court shall postpone transmittal of the record, enter an order to facilitate the preparation of the record, and notify the circuit court of the postponement and estimated date of transmittal. (SCAO approved form MC 503 is available for requesting an extension in appeals to the Court of Appeals. There is no court rule which specifically requires or allows the reporter/recorder to motion the court for an extension of time in appeals to circuit court.) [MCR 7.101(F)(4)]

If the trial court postpones transmittal of the record, the circuit court may, on its own initiative, exercise superintending control over the trial court, the reporter/recorder, or others to prevent delay.
[MCR 7.101(N)(1)]

In order to keep appeal costs down, the rules provide that a party may withdraw the transcript from the clerk only to prepare briefs. [MCR 7.101(I)(2)]

B. Form of Transcript

Although not required under any court rules pertaining to circuit court appeals, it is suggested that the transcript:

1. Be filed in one or more volumes with a hard-surfaced or other suitable cover;
2. Show title of action on front cover;
3. Be prefaced with table of contents showing subject matter of transcript, with page references to significant parts of the trial or proceedings, including testimony of each witness by name, arguments of attorneys, jury instructions;
4. Have consecutively numbered pages, beginning with title page, at bottom center of each page.

[MCR 7.101(F)]

5-03 APPEALS TO COURT OF APPEALS

A. Procedure

1. Obtain written request from attorney with suitable deposit, or receive order from circuit court as specified in MCR 6.425(F)(2).

With the claim of appeal, the appellant shall file a copy of the certificate of the reporter or recorder, a statement by the attorney that the transcript has been ordered (in which case the certificate of the court reporter or recorder must be filed as soon as possible thereafter), or a statement by the attorney that there is no record to be transcribed. [MCR 7.204(C)(2) and MCR 7.204(E)(4)]

The appellant is responsible for securing the filing of the transcript by ordering the full transcript from the court reporter or recorder, however, the court reporter or recorder is responsible for the actual filing. If the appellant wants less than the full transcript, a motion must be filed within the time required for filing an appeal, and, if the motion is granted, the appellee may file any portions of the transcript omitted by the appellant. The filing of this motion extends the time for filing the court reporter's or recorder's certificate until 7 days after entry of the trial court's order on the motion. [MCR 7.210(B)(1)(a), (c) and MCR 7.210(B)(3)(b)]

2. Prepare SCAO approved form MC 501 - Reporter/Recorder Certificate of Order of Transcript on Appeal. Certificate is to be furnished within 7 (seven) days after a transcript is ordered by a party or the court (see above also). [MCR 7.210(B)(3)(a)]
3. Complete transcript within time limits listed below and file the transcript with the trial court:
 - a. 14 days after it is ordered for an application for leave to appeal from an order granting or denying a motion to suppress evidence in a criminal case;
 - b. 28 days after it is ordered in an appeal of a criminal conviction based on a plea of guilty, guilty but mentally ill, or nolo contendere;
 - c. 42 days after it is ordered in any other interlocutory criminal appeal or a custody case; (termination of parental rights in the juvenile division of the probate court is considered a custody case)
 - d. 91 days after it is ordered in other cases.

4. The Court of Appeals may extend or shorten these time limits in an appeal pending in the court on motion filed by the court reporter or recorder or a party. Prepare SCAO approved form MC 503 - Motion to Extend Time for Filing Transcript on Appeal. [MCR 7.210(B)(3)(b)]
 - a. FILE 5 (five) copies of a motion and affidavit (see MC 503) with the Court of Appeals along with the appropriate filing fee. In lieu of this fee, a motion to waive fees or a copy of an order appointing an attorney may be filed. [MCR 7.211(A)]
 - b. The motion will be heard on the first Tuesday, 7 (seven) days after the motion is served on all parties. [MCR 7.211(B)(2)(e)]
 - c. File completed transcript with the trial court. [MCR 7.210(B)(3)(b)]

B. Form of Transcript

The transcript must:

1. Be filed in one or more volumes with a hard-surfaced or other suitable cover;
2. Show title of action on front cover;
3. Be prefaced with table of contents showing subject matter of transcript, with page references to significant parts of the trial or proceedings, including testimony of each witness by name, arguments of attorneys, jury instructions;
4. Have consecutively numbered pages, beginning with title page, at bottom of each page.

Transcripts with more than one page, reduced in size, printed on a single page are permitted and encouraged, but a page in that format may not contain more than four reduced pages of transcript.

[MCR 7.210(B)(3)(d)]

Immediately after the transcript is filed, prepare SCAO approved form MC 502 -Notice of Filing of Transcript and Affidavit of Mailing. File with the Court of Appeals, with copies to all parties. Standard practice has been to provide the trial court with a copy of the notice as well; however, there is no requirement to do so.

[MCR 7.210(B)(3)(e)]

C. Copies of Transcripts

Additional copies of the transcripts required by the appellant may be ordered from the court reporter or recorder, or photocopies may be made of the transcript furnished by the court reporter or recorder. [MCR 7.210(B)(3)(c)]

D. Reproduction of Records

Where facilities for the copying or reproduction of records are available to the clerk of the court or tribunal whose action is to be reviewed, the clerk, on a party's request and on deposit of the estimated cost or security for the cost, shall procure for the party as promptly as possible and at the cost to the clerk, the requested number of copies of documents, transcripts, and exhibits on file. [MCR 7.210(D)]

E. Use of Records

Until the record is sent to the Court of Appeals, the parties may withdraw any transcripts and exhibits filed in the case on written receipt to the clerk. The party may retain the transcripts and exhibits only as long as necessary to prepare an appellate brief and shall promptly return them to the clerk. [MCR 7.210(E)]

F. Responsibility When More Than One Reporter or Recorder

In a case in which portions of the transcript must be prepared by more than one reporter or recorder, unless the court has designated another person, the person who recorded the beginning of the proceeding is responsible for ascertaining that the entire transcript has been prepared, filing it, and giving the notice required by MCR 7.210(B)(3)(e). [MCR 7.210(B)(3)(g)]

G. Discipline

A court reporter or recorder failing to comply with the requirements of these rules is subject to disciplinary action by the courts, including punishment for contempt of court, on the court's own initiative or motion of a party. [MCR 7.210(B)(3)(f)]

5-04 SCAO APPROVED FORMS

A. Instructions

Filing/distribution instructions at the top of all forms are self-explanatory. Please observe the instructions at all times.

1. Heading on Forms
 - a. Complete the entire heading, i.e., court number and file number (on MC 501 only, check whether appeal goes to Circuit Court or Court of Appeals).
 - b. For probate matters (IN THE MATTER OF:) please provide complete case name and specify the appellant and appellee (at request of the Court of Appeals).
2. MC 501, Reporter/Recorder Certificate of Ordering of Transcript on Appeal
 - a. To allow the appellant to comply with MCR 7.101(C)(3)(c), MC 501 must be completed and certified by the reporter/recorder so that the appellant may file a copy with appellate court within 7 days after the claim of appeal is filed.
 - b. For appeals to the Court of Appeals, MCR 7.210(B)(3)(a) requires the reporter/recorder to file this certificate within 7 days after a transcript is ordered by a party or the court. Although it is the responsibility of the appellant to file this form in appeals to the circuit court, the court reporter/recorder often takes this responsibility to ensure that filing is accomplished timely.
3. MC 502, Notice of Filing of Transcript and Affidavit of Mailing

This form is for use in appeals to the Court of Appeals as required under MCR 7.210(B)(3)(e) but can be used in appeals to circuit court as well. The form is to be completed by each reporter/recorder who is filing in a given case. The Affidavit of Mailing on the reverse side of the original copy must be completed and notarized before filing. There is no requirement to give notice of filing or an affidavit of mailing for appeals to circuit court, however, the court reporter/recorder often takes this responsibility. Send ALL correspondence to the Court of Appeals at its Lansing, Michigan address.

4. MC 503, Motion to Extend Time for Filing Transcript on Appeal

a. To Court of Appeals

This form is for appeals to the Court of Appeals as required under MCR 7.210(B)(3) but can be used in appeals to circuit court as well. The reporter/recorder is responsible for completing the form.

b. To Circuit Court

There is no requirement for a formal motion to extend time for appeals to the circuit court; however, individual court practice may require such a document. MCR 7.101(F) states that in appeals to circuit court, when a transcript is not available within the time required, the trial court shall postpone transmittal of the record, enter an order to facilitate the preparation of the record, and notify the circuit court of the postponement and of the estimated date of transmittal. Extension of time on appeal to the Circuit Court should be requested only under the most extraordinary circumstances. Every effort should be made to produce all transcripts on appeal within the 28 days allowed by court rule.

c. Procedure for determining HEARING DATE IN THE COURT OF APPEALS:

- 1) The Court of Appeals hears motions on Tuesday;
- 2) A motion fee must accompany the motion. In lieu of this fee, a motion to waive fees or a copy of an order appointing an attorney may be filed.

B. MC 501

See the form at: <http://courts.michigan.gov/scao/courtforms/appeals/mc501.pdf>

C. MC 502

See the form at: <http://courts.michigan.gov/scao/courtforms/appeals/mc502.pdf>

D. MC 503

See the form at: <http://courts.michigan.gov/scao/courtforms/appeals/mc503.pdf>

